



BULLETIN

JUDGE BROWN REELECTED As PRESIDING JUDGE

Nebraska Workers' Compensation Court Judge Ronald Brown has been reelected as presiding judge through June 30, 2001.

The Nebraska Workers' Compensation Court is composed of seven judges who are initially appointed by the Governor of the state and who then remain on the bench for successive six-year terms upon the approval of the electorate. Every two years, one of the judges is elected as Presiding Judge by the judges of the court. ❖

NWCC RULES OF PROCEDURE NOW AVAILABLE

The new NWCC Rule Book, including changes approved since October 27, 1998, is now available from the court. The rules may also be accessed on the court's website at <http://www.nol.org/workcomp/> on the "What's New" page.

To order the new Rule Book, fill out and send the court's order form (see pages 5 and 6 of this *Bulletin*) along with check or money order for \$7.00 to the Nebraska Workers' Compensation Court, P. O. Box 98908, Lincoln, NE 68509-8908. ❖

State Capitol Building, Lincoln, NE 68509
800-599-5155 (toll free in Nebraska only)
402-471-6468 (Lincoln and out-of-state)
402-471-2700 (fax)
<http://www.nol.org/workcomp/>



COMPENSATION COURT PUBLIC HEARING SET FOR DEC. 1, 1999

A public hearing of the Nebraska Workers' Compensation Court is set to take place on December 1, 1999 at 1:30 p.m. in Room 1520, State Capitol Building, 1445 'K' street in Lincoln.

Proposed amendments to several of the court's procedural rules will be considered. To obtain a copy of the proposed changes, please contact the Clerk of the Nebraska Workers' Compensation Court, P.O. Box 98908, Lincoln, NE 68509-8908. The Notice of Public Hearing and proposed changes may also be accessed on the court's website at <http://www.nol.org/workcomp/> on the "What's New" page under Notices and Press Releases. For further information, call the court's toll-free information line: (800) 599-5155 in Nebraska only, or (402) 471-6468 for Lincoln and out-of-state callers. ❖

REHABILITATION SUPERVISOR DICK CRAIG TO RETIRE DEC. 31

Dick Craig, manager of the Nebraska Workers' Compensation Court's Vocational Rehabilitation section, will retire on December 31 after 10 years with the court.

Before coming to the court in November of 1989, he worked for the Nebraska Department of Vocational Rehabilitation Services, Omaha office, for two years. Prior to that Dick worked for 17 years in Illinois as a vocational rehabilitation counselor and case work supervisor. He plans on relocating to be closer to his family and grandchildren who reside in Maryland and Louisiana.

Dick has an M.S. in Vocational Rehabilitation Administration from Southern Illinois University. He is past chairman of the Vocational Rehabilitation/Return to Work sub-committee of the International Association of Industrial Accident Boards and Commissions. ❖

CHANGE IN RATING SYSTEM CAUSES CHANGES IN SELF-INSURANCE PROGRAM

Employers wanting to self-insure their obligations under the Nebraska Workers' Compensation Act must apply to and be approved by the court. As a condition of approval, the court requires the deposit of acceptable security to secure the payment of compensation liabilities as they are incurred.

Historically, the amount of security required has been a function of "manual premium." Using job classifications, payroll, and prevailing premium rates, the court calculated the premium that would be paid for like employment to a workers' compensation insurer. The bond required was equal to 125 percent of that manual premium amount, although the formula had not been consistently applied.

Because of competitive rating, the court is no longer able to determine "manual premiums." In addition, the previous formula did not take into consideration an individual employer's experience. No credit could be given to employers who focused on safety and accident reduction. It was the court's feeling that the security required *should* be based on losses so that a self-insurer's claim experience *is* a factor in setting the amount. The court, therefore, set about developing a new guideline formula; one that could be applied consistently.

DETAILS OF THE GUIDELINE FORMULA BEING USED BY THE COURT

How is the state correlating the surety bond requirement to claims experience? A detailed description of each of the elements in the guideline formula used for determining the amount of the surety bond required should help answer that

question. First of all, after discussing security requirements with other jurisdictions, the court concluded that since the purpose of the bond is to cover the employer's obligations under the act, should the employer be unable to meet those obligations, loss or claim data should be the basis for the calculation.

Given this, the court sought data from the Department of Insurance relating paid claims to unpaid claims. The data provided by insurers for Nebraska workers' compensation claims indicates, over time, average unpaid losses (reserves on known plus incurred but unreported losses) equal 3.5 to 4.0 times average paid losses. The court has no reason to expect that self-insurers, as a group, would have a significantly different loss payment pattern than commercial insurers. So, on average, for an employer remaining self-insured up to the day of bankruptcy, unpaid losses could be expected to be 3.5 to 4.0 times average paid losses — perhaps higher if the employer experienced unusual growth.

Monitoring the self-insurer's financial status to determine continued qualification for self-insurance should enable the court to require commercial insurance from the employer sometime prior to the day of bankruptcy. This could decrease the 3.5 to 4.0 multiplier, depending on the length of time in advance self-insurance is terminated and whether or not the employer has experienced unusual growth. For this reason, the multiplier chosen for the formula was reduced from between 3.5 and 4.0 to 2.5. In developing the guideline formula, the court has applied the multiplier to average

paid losses for the prior three years.

The entire calculation to this point is dependent on averages. A bond based on this formula (2.5 times average paid losses) could be inadequate in as many as 40 percent of the cases to which it is applied. The court feels it is obligated to set a security requirement high enough to adequately secure the obligations of self-insured employers in a very high percentage of cases. To allow for estimation errors, volatility, and the possibility of a single large case, the calculation is increased by 40 percent or \$500,000 whichever is greater. This additional consideration should minimize the number of cases in which the security required is inadequate.

In summary, the guideline formula may be stated as (average paid claims \times 2.5) \times 1.4 or (average paid claims \times 2.5) + \$500,000, whichever is greater. However, the court reserves the right to modify the level of security required because of unusual growth, change in exposure, etc., at its discretion.

COURT'S ALTERNATIVE TO USE OF THE GUIDELINE FORMULA

Acknowledging that the guideline formula is based on averages, the court recognized that it might be asked whether other options for determining the amount of security exist. Therefore, the court will also accept an amount determined using a calculation based on an estimate attested to by a qualified independent actuary. The actuarial statement must include a case reserve for each open claim and the calculation of incurred but unreported claims. The statement must also include

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NATIONAL CENSUS OF FATAL OCCUPATIONAL INJURIES, 1998

BUREAU OF LABOR STATISTICS: FATAL JOB-RELATED INJURIES AT LOWEST POINT SINCE CENSUS BEGAN

The number of fatal work injuries nationally fell to 6,026 during 1998, about 3 percent below the previous year and the lowest count since the Census of Fatal Occupational Injuries, conducted by the Bureau of Labor Statistics, U.S. Department of Labor, began in 1992. An 18 percent drop in job-related homicides accounted for a large portion of the decline. Deaths from workers being struck by falling objects or caught in running machinery also fell from their 1997 totals.

In contrast, worker deaths from highway crashes, from being struck by vehicles, and from contacts with overhead powerlines were at their highest levels during the seven-year period. The construction industry reported the largest number of fatal work injuries of any industry and accounted for nearly one-fifth of the fatality total in 1998.

PROFILES OF 1998 FATAL WORK INJURIES

Highway crashes continued as the leading cause of on-the-job fatalities during 1998, accounting for 24 percent of the fatal work injury total. The number of these fatalities increased slightly over their 1997 total to reach the highest level since the BLS fatality census began in 1992. This rise resulted mainly from an increase in the number of workers killed in highway crashes between oncoming vehicles. Slightly over two-fifths of the 1,431 victims of job-related highway fatalities were employed as truck drivers.

The number of workers fatally struck by vehicles rose to 413, an increase of 13 percent from their 1997 total and the highest number in the seven-year period that the fatality census has been compiled. In con-

trast to job-related fatalities, total highway and pedestrian fatalities dropped in 1998 from 1997, according to preliminary figures from the U.S. Department of Transportation.

The second leading cause of on-the-job deaths, workplace homicides, fell to its lowest level in the past seven years. A total of 709 workers died as a result of job-related homicide in 1998 compared with 1,080 in 1994, which had the highest count in the seven-year period. The drop in homicide at work was most pronounced in retail trade, where homicides fell by 46 percent from 1994.

Robbery continued to be the primary motive of job-related homicides in retail trade when a motive could be ascertained from the source documents. The 18 percent drop in workplace homicides from 1997 was

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CHANGE IN RATING SYSTEM CAUSES CHANGES IN SELF-INSURANCE PROGRAM

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both the actual and present value amounts. The self-insurer would be responsible for any cost associated with obtaining the statement and a yearly statement would be required.

This actuarial statement would then become the basis for calculation of the amount of security required. Again, because of the assumption that the court would not permit an employer to remain self-insured up to the day of bankruptcy, the estimate would be reduced by one-third. Also again, to allow for estimation errors, volatility, and the possibility of a single

large case, there would be an increase of 40 percent or \$500,000 whichever is higher. Any unusual growth, change in exposure, etc., could impact this calculation as well, at the discretion of the court.

OTHER CHANGES

Self-insurers are responsible for annually paying to the State Treasurer an amount to compensate for the premium tax that would be paid by an insurer if the employer was covered by a commercial policy. This is often referred to as an "in-lieu-of-premium tax." In

addition, self-insurers are charged an assessment for the Compensation Court Cash Fund. Previously, the amounts due from self-insurers were percentages of the "prevailing premium rate which would be paid for like employment to" an insurance carrier.

Since "prevailing premium rates" can no longer be determined due to competitive rating, LB 216 revised two sections of the statutes to provide that the assessments will be based on prospective-loss costs for like employment. The change was intended to be budget-neutral. ❖

COMPENSATION COURT DECISIONS AND ORDERS NOW AVAILABLE THROUGH THE INTERNET

Decisions and Orders of the Nebraska Workers' Compensation Court are now available via the Internet at: <http://wccwebprod.wcc.state.ne.us/dtsearch.htm>. You may also link to the search site from the court's website at: <http://www.nol.org/workcomp/> or the Nebraska Bar Association website at: <http://www.nebar.com>.

This website uses search engine software to allow you to search the court's Decisions and Orders going back to the middle of 1995. The software performs boolean search requests which consist of a group of words or phrases linked by connectors such as *and* and *or* that indicate the relationship between them (detailed instructions on how to use

the search engine are included within the website). The site is updated nightly with new Decisions and Orders issued by the court.

Please note that the only official versions of the opinions, orders, or other judgments of the Nebraska Workers' Compensation Court are the original, signed versions which are on file with the Clerk of the Court.

NATIONAL CENSUS OF FATAL OCCUPATIONAL INJURIES, 1998 BUREAU OF LABOR STATISTICS: FATAL JOB-RELATED INJURIES AT LOWEST POINT SINCE CENSUS BEGAN

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more pronounced than the 8 percent decline in total homicides that was reported by the U.S. Department of Justice.

In 1998, deaths resulting from on-the-job falls totaled 702, nearly the same as the worker homicide total. Modest increases in falls from roofs and scaffolds resulted in seven-year highs for these two totals. Most of the worker deaths resulting from falls from roofs and scaffolds occurred in the construction industry, which accounts for about half the fatal workplace falls each year.

Electrocutions accounted for 6 percent of the fatal injuries and increased by 12 percent from 1997. Contact with overhead power lines accounted for about half the deaths from electrocution.

In fatal event categories that increased from 1997 to 1998, much of the increases occurred in the construction industry.

On average, about 17 workers were fatally injured each day during 1998. Eighty-four percent of fatally injured workers died the day they were injured; 97 percent died within 30 days. There were 227 multiple-fatality incidents (incidents that resulted in two or more worker deaths), resulting in 555 job-related deaths. This was a slight increase over the number of multiple fatality events reported for 1997, when 220 incidents resulted in 544 deaths. Unlike some previous years, there was no single event such as an airline crash with more than a dozen fatalities in 1998.

To see how Nebraska fared in the 1998 Census of Fatal Occupational Injuries and the 1997 Survey of Occupational Injuries and Illnesses, please refer to the Nebraska Workers' Compensation Court's 57th Annual Report, which will be available later this year.

To order a copy of the Annual Report, fill out and send the court's order form (or a written request) along with check or money order for \$5.00 to the Nebraska Workers' Compensation Court, P. O. Box 98908, Lincoln, NE 68509-8908. The report will be mailed when it becomes available. For further information, please call the court's toll-free information line (800) 599-5155 (in Nebraska only), or (402) 471-6468 (for Lincoln and out-of-state callers). ❖

HAVE YOU VISITED OUR WEBSITE YET?

Several publications and forms produced by the Nebraska Workers' Compensation Court, as well as information regarding the court's operations, are available on the court's redesigned Internet website at:

<http://www.nol.org/workcomp/>

Nebraska Workers' Compensation Court

First Report of Alleged Occupational Injury or Illness

NWCC Form 1
Revised 7-97

Employer

Employer FEIN _____ UI# _____ SIC Code _____	
Business Name(s) _____	Insured Name <i>(If different from employer name)</i> _____
Address _____	
City _____	
State _____ Zip Code _____ Phone _____	
Employer's Location Address <i>(If different)</i> _____ Location _____	

Insurance Carrier

Carrier FEIN _____		Admin. FEIN _____		
Name _____		Claim Administrator <i>(Name, address & phone number)</i> _____		
Address _____				
City _____				
State _____ Zip Code _____ Phone _____				
Policy Number _____		Check if Appropriate Self Insured <input type="checkbox"/> TPA <input type="checkbox"/>	Carrier/Claim Administrator Claim # _____	
Policy Period: From _____ To _____			Jurisdiction Claim # _____	
Insurance Carrier/Self-Insured Code # _____		Insured Report # _____		Jurisdiction _____

Employee

Name <i>(Last, First, Middle)</i> _____		Full Pay for DOI Yes <input type="checkbox"/> No <input type="checkbox"/>		Number of Days Worked Per Week _____		Sex Male <input type="checkbox"/> Female <input type="checkbox"/>	
Address _____		Salary Cont. Yes <input type="checkbox"/> No <input type="checkbox"/>		Occupational Job Title _____		Occupational Code _____	
City _____		Number of Dependents _____					
State _____ Zip Code _____ Phone _____		Marital Status _____ Wage \$ _____					
Date of Birth _____		Social Security Number _____		Date Hired _____		Employment Status FT <input type="checkbox"/> PT <input type="checkbox"/> Other <input type="checkbox"/>	
		Married <input type="checkbox"/>		Hourly <input type="checkbox"/>		Date Employee Began Work-Related Duties _____	
		Separated <input type="checkbox"/>		Daily <input type="checkbox"/>			
		Unmarried <input type="checkbox"/>		Weekly <input type="checkbox"/>			
		Unknown <input type="checkbox"/>		Bi-Weekly <input type="checkbox"/>			
				Monthly <input type="checkbox"/>			

Occurrence/Treatment

Date of Injury/Illness _____		Time Employee Began Work _____ AM <input type="checkbox"/> PM <input type="checkbox"/>		Time of Occurrence _____ AM <input type="checkbox"/> PM <input type="checkbox"/>		Last Work Date _____	
Where Did Injury/Illness Occur? County _____ State _____ Zip _____				Did Injury/Illness Occur On Employer's Premises? Yes <input type="checkbox"/> No <input type="checkbox"/>			
Date Employer Notified _____		Date Disability Began _____		Date Returned to Work _____		If Fatal, Give Date of Death _____	
Type of Injury/Illness <i>(Briefly describe the nature of the injury or illness; eg. lacerations to forearm)</i> _____							Nature of Injury Code _____
Part of Body Affected <i>(Indicate the part of the body affected by the injury/illness; eg. right forearm, lowerback)</i> _____							Part of Body Code _____
How Injury/Illness Occurred <i>(Describe the sequence of events and include any objects or substances that directly injured the employee or made the employee ill)</i> _____							Cause of Injury Code _____
Initial Treatment No Medical Treatment <input type="checkbox"/> First Aid By Employer <input type="checkbox"/> Minor Clinic/Hospital <input type="checkbox"/> Emergency Care <input type="checkbox"/> Hospitalized More Than 24 Hours <input type="checkbox"/> Future Major Medical/Lost Time <input type="checkbox"/>							
Date Administrator Notified _____		Form Preparer's Name, Title and Phone _____					Date Prepared _____

General Instructions

Items in bold are mandatory fields. First Report of Injury or Illness (FRI) without this information will be returned.

Item—Definitions

Employer:

- Employer FEIN—the employer/insured's **Federal Employer's Identification Number**.
- UI#—the employer/insured's **Unemployment Insurance number**.
- SIC Code—**Standard Identification Classification** code which represents the nature of the employer's business.
- **Business Name—include all business names/doing business as (dba)**
- Address—the address of the employer's facility.
- **City—the city of the employer's facility.**
- **State—the state of the employer's facility.**
- Zip Code—the zip code of the employer's facility.
- Phone—phone number at the employer's facility.
- **Insured Name (if different from employer)—the named insured on the policy or the financially responsible self-insured employer.**
- Employer's location address (**if different**)—the address of the employer's facility where the employee was employed at the time of injury.
- Location #—a code defined by the insured/employer which is used to identify the employer's location.

Insurance Carrier:

- **Carrier FEIN—carrier's Federal Employer's Identification Number.**
- **Admin. FEIN—administrator's Federal Employer's Identification Number.**
- **Name—the worker's compensation insurer, approved self insured, or intergovernmental risk management pool.**
- **Address—address of business entity.**
- **City—city of business entity.**
- **State—state of business entity.**
- Zip Code—zip code of business entity.
- Phone—phone number of business entity.
- **Claim Administrator (name, address, & phone)—enter the name, address and phone number of the carrier, third party administrator, risk management pool, or self-insurer responsible for administering the claims.**
- Policy #—the number assigned to the contract/policy for that employer.
- Policy Period—the effective and expiration dates of the contract.
- Insurance carrier/self insured code #.
- **Self insured/TPA—Is the entity a self insured employer or a third party administrator? Check one.**
- **Carrier/claim administrator claim #—identifies a specific claim within a claim administrator's claims processing system.**
- Insured Report #—a number used by the insured to identify a specific claim.
- Jurisdiction—the governing body or territory whose statutes apply (NE).

Employee:

- **Name—give full name as shown on payroll. (Avoid initials if possible).**
- **Address—enter employee's current address and phone number to which communications about the case may be directed.**
- Date of Birth—the date the injured worker was born.
- **Social Security Number.**
- Date Hired—the date the injured worker began his/her employment with the employer.
- Full pay for DOI (date of injury)—check one.
- Number of days worked per week—the number of the employee's regularly scheduled work days per week.
- Sex—check one.
- Marital Status—check one.
- Wage—check one and state wage.
- Occupational job title—the primary occupation of the claimant at the time of the accident.
- Date employee began work—related duties—date pertaining to employee's present occupation.
- Employment Status—check one.

Occurrence/Treatment:

- **Date of Injury—date on which the accident occurred.**
- Time employee began work—time employee began work for that date.
- Time of occurrence—time of day the injury occurred.
- Last work date—the last paid work day prior to the initial date of disability.
- **Where did injury/illness occur—complete county, state, and zip code.**
- Did injury/illness occur on employer's premises—check one.
- Date employer notified—the date that the injury was reported to a representative of the employer.
- Date disability began—if not disabled answer none and skip questions.
- Date returned to work—if injured has returned to work, complete this question.
- **If fatal, give date of death.**
- **Type of injury—describe the nature of injury.**
- **Part of body—the part of the body to which the employee sustained injury.**
- **How injury/illness occurred—a free form description of how the accident occurred and the resulting injuries.**
- Initial treatment—check one.
- Date administrator notified—the date the claim administrator who is processing the claim received notice of the loss or occurrence.
- Form preparer's name and phone.
- Date prepared—date form was actually completed.

Type or print neatly your response in ink.

EDI PRODUCTION DOUBLED IN FISCAL YEAR 1999

For the past three years, the Nebraska Workers' Compensation Court's Electronic Reporting Initiative has allowed employers, insurers, and others to file first reports of injury in a computerized format as opposed to sending these forms through the mail or by fax.

Adding new Electronic Data Interchange (EDI) trading partners for the submission of these reports is an ongoing process. By the end of fiscal year 1999, about 26 percent of all first reports of injury were coming to the court electronically—doubling the production of the previous year (about 13 percent).

EDI DEFINED

What is EDI? The International Association of Industrial Accident Boards and Commissions (IAIABC) has defined electronic data interchange as the intercompany exchange of standard business documents in a machine-readable and standardized electronic format. With EDI fully set in motion, the court will receive versions of its current First Report of Alleged Occupational Injury or Illness, Compensation and Expense Report, Proof of Insurance, and other forms in an electronic (computer-to-computer and application-to-application) format.

Why use EDI? According to the IAIABC, the benefits of electronic data interchange include:

1. Reduced typographical errors, computational errors, misinterpretations, and omissions.
2. Reduced paper-based costs: paper and forms, postage and express mail, faxing.
3. Faster document exchange/turn-around time.
4. Operational improvements: reduced inventory and outstanding receivables.

5. Reduced processing costs.
6. Increased employee efficiency.
7. Bench marking among jurisdictions and provinces using a central data repository for statistical analysis.

EDI TRADING PARTNERS

The court's first EDI trading partner, Liberty Mutual Insurance Co., began production May 5, 1997.

Currently the court has 12 other trading partners in production as well: Allied Insurance Group, American International Group, American Interstate Insurance Company, Bituminous Insurance Company, Cigna Insurance Company, Employers Insurance of Wausau, a Mutual Company, Employers Mutual Casualty Company, Farmland Mutual Insurance Company, GAB Robins, Gallagher Bassett Services, Inc., Iowa Beef Processors (IBP), Inc., and Kemper Reinsurance Company.

About a half dozen trading partners are in the start-up pilot phase, where pilots could begin within the next three months. The court has communicated its desire to go EDI with many additional insurers as well.

Meanwhile, the court's Information Technology section has converted mainframe first report of injury, compensation and expense report, and vocational rehabilitation information into a relational database system. This became available in December of 1997, along with new tracking data for the adjudication section's petition/motion activities.

NATIONAL EDI STATUS

As of July 1, 1999, most jurisdictions and provinces are involved in

the IAIABC EDI project at some level of participation. Of these, 37 indicated that they use some type of EDI for Workers' Compensation reporting. Many jurisdictions and provinces expressed an interest in upgrading to a new standard EDI data format, called Release II.

Release II is an improved format, more flexible than Release I, which will allow collection of a wider variety of data. This format was completed on July 1, 1998 and its standard is now available. The court will be monitoring its neighbor, Iowa, which initially volunteered to test Release II and is now in production using Release II with one trading partner.

VOLUNTEER VS MANDATED PARTICIPATION

There are 29 jurisdictions that currently accept IAIABC EDI reports, or anticipate accepting these in the near future. Of these, 26 jurisdictions use volunteer participation and five jurisdictions require electronic filing by mandate. It is anticipated in the next two years that 12 of the volunteer jurisdictions will be mandating. Nebraska is one of the 12 and will require electronic filings beginning July 1, 2000, unless an alternative EDI implementation plan has been approved by the court as of that date. Other jurisdictions are in the process of evaluating whether to mandate or ask for volunteer participation. ❖

ENCOURAGING ELECTRONIC COMMUNICATION WITH THE WORKERS' COMPENSATION COURT

During the last few years, the Nebraska Workers' Compensation Court has taken steps to encourage the use of electronic means to communicate with the court.

This has included communicating and filing by facsimile (FAX), implementing Electronic Data Interchange (EDI) for filings, making use of electronic mail (email), as well as establishing and maintaining an Internet website.

Recently the court began a pilot project to expedite the review and processing of lump sum settlement applications. In July 1999, the law firms of Baylor, Evnen, Curtiss, Gritit & Witt (Lincoln, NE), Rod Rehm, P.C.

(Lincoln, NE), Welch & Wulff (Omaha, NE), and James F. Fenlon, P.C. (Omaha, NE) began communicating with the court's Legal section staff using email, WordPerfect, and Word Attachments. For purposes of the pilot project, email may be utilized to respond to routine inquiries and when submitting certain revisions involved in the review of lump sum settlements.

Weekly status reports are generated by the Legal section which will allow the court to track:

- the number of emails generated,
- the subject matter of the communication, and

- the response time.

Since July, the court has expanded the program to include several more law firms throughout Nebraska.

In addition to the above, the court now accepts proposed orders pertaining to vocational rehabilitation and independent medical examiners via email. To email the appropriate judge's assistant (or to contact other court staff via email) go to the **Staff Directory** page on the court's website at <http://www.nol.org/workcomp/>. To leave a general email for the court, go to the website's **Feedback** page and court staff will respond. ❖

AUTUMN 1999



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